

**REMARKS/ARGUMENTS**

Claims 48, 50-53, 55, and 57-59 are pending. The claims have been amended as noted above. Reexamination and reconsideration of the claims, as amended, are respectfully requested.

As an initial matter, Applicants wish to address the Examiner's Response to Arguments. Applicants have argued, and continue to believe, that the apparatus of Evard does not inherently apply proximal tension to or pull the distal anchor proximally against the distal side of the tissue during deployment of the device. The Examiner argues that since the Evard device is self-expanding, "pulling on a constraint catheter as disclosed would inherently pull the distal anchor proximally against the distal side of the distal tissue layer while the tension to apparatus is applied, since the catheter is part of the apparatus." Applicants respectfully disagree.

Evard provides very little information on how the various disclosed anchors may be deployed. The most pertinent information on deploying the anchors is found on pages 40-46, where the anchors are taught to be delivered "through the relative movement of an inner-rod mechanism, allowing . . . [the anchor] . . . to deploy in a first partially expanded state, and then to a fully expanded state." It will be appreciated that if an inner "push" rod is used to deploy the anchor, deployment will not involve a proximal tension applied to the tissue by the anchor. As Applicants have been unable to locate any contrary teachings within Evard, it is believed that the Examiner cannot maintain the argument that deployment of the Evard anchors would somehow inherently pull the distal anchor proximally against the distal side of the distal tissue layer, since there never is tension applied to the apparatus when it is deployed with a push-rod.

Turning now to the specific rejection of independent claim 48 and all claims dependent thereon over Evard, it is noted that the Examiner pointed to no specific teaching within Evard that a proximal tension is applied to the apparatus to pull the distal anchor proximally against the distal side of the distal tissue layer. For the reasons discussed above, such a step is not inherent in Evard, and therefore the rejection of the claims as being anticipated by Evard should be withdrawn.

Claims 48 and 57-59 were further rejected as being anticipated by Suyker. Such rejections are respectfully traversed. Suyker describes a device and method for connecting hollow body structures using a staple-like anchor. In particular, the staple-like anchor is deployed using a device which plastically deforms a plurality of individual staple members 1-6 extending from each side of a central serpentine ring. The applicator, illustrated in Fig. 4, includes opposed proximal and distal anvils 123 and 126 (see Fig. 11) which are simultaneously drawn together to close and shape the individual staple legs on the connector. Thus, the connector will never apply a proximal tension against the tissue layer during any portion of the implantation procedure. Even though the distal anvil could theoretically be drawn proximally against the adjacent tissue, the proximal anvil will simultaneously be advanced distally to balanced any proximal force.

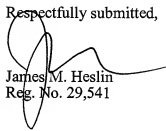
For these reasons, Applicants believe that claim 48 even prior to amendment distinguished the cited prior art. Nonetheless, in order to expedite prosecution of the present application, Applicants have amended claim 48 to further clarify that the proximal tension applied against the distal side of the distal tissue layer is applied "prior to deployment of the proximal anchor." Support for this amendment is found, for example, in paragraph [0088] of the application as published. As Evard would not apply proximal tension since the anchor is being distally advanced with a push-rod, and Suyker would not apply proximal tension prior to deployment of the proximal anchor, it is believed that independent claim 48, as well as all claims dependent thereon, are allowable over the teachings of these two references. For these reasons, Applicants respectfully request that the claims be allowed and the application be passed to issue at an early date.

**CONCLUSION**

In view of these amendments, Applicants believe that independent claim 48, the only pending independent claim, as well as all claims dependent thereon are now in condition for allowance and request that the application be passed to issue at an early date.

If for any reason the Examiner believes that a telephone conference would in any way expedite prosecution of the subject application, the Examiner is invited to telephone the undersigned at 650-326-2400.

Respectfully submitted,



James M. Heslin  
Reg. No. 29,541

TOWNSEND and TOWNSEND and CREW LLP  
Two Embarcadero Center, Eighth Floor  
San Francisco, California 94111-3834  
Tel: 650-326-2400  
Fax: 415-576-0300  
Attachments  
JMH:jis  
62546062 v1